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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------|
| 09/938,350 | 08/23/2001 | David Beran | DBI-001 | 1347 |
| 7590 11/22/2005 | | | | |
| Marc S. Hanish THELEN REID & PRIEST LLP P.O. BOX 640640 San Jose, CA 95164 | | | EXAMINER FADOK, MARK A | |
| | | | ART UNIT 3625 | PAPER NUMBER |

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 09/938,350 | | BERAN, DAVID | |
| | Examiner | | Art Unit | |
| | Mark Fadok | | 3625 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/16/05 & 9/12/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-9 is/are pending in the application.
- 4a) Of the above claim(s) 4,6,8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 1/13/2005, which was received 5/16/2005. Applicant's filing of a corrected oath and certified copy of the foreign priority document overcomes the priority and Oath issues in the previous action. Applicant further canceled claim 3 and provided additional claims 5 through 9 of which an election was made of Group IA including claims 1,2,5 and 7. The applicant's remarks and amendment have been carefully considered but were not found to be persuasive in regards to the merits, therefore, the previous rejection modified as necessitated by amendment follows:

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 102

Art Unit: 3625

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2,5 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Datari (US 6,418,169)

In regards to claim 1, Datari discloses a method for providing a data stream to a client from a source in an enclosed and secured network (col 8, lines 45-67) including, receiving a request for a datastream from a client at an operator server (col 6, lines 55-60); passing the request for the data stream from the operator server to a centralized server (col 10, lines 1-20); verifying the identity of the client (Fig 7); supplying the client with a data stream from the source (FIG 7), the data stream optimized by a choice of path (col 8, lines 45-65); and setting up a secured channel at the same time as said supplying (col 2, lines 43-67), said secured channel reserved for optional feedback from the client during receipt of the requested data stream (col 2, lines 15-30).

In regards to claim 2, Datari teaches wherein the source is a provider and/or distributor of services, information, or goods, the sale or distribution thereof ensured by said data stream transfer (Fig 7)

In regards to claim 5, Datari teaches wherein the data stream is optimized by time (col 8, lines 20-40).

In regards to claim 7, Datari teaches wherein said passing includes passing the request for the data stream from the operator server through a national server to a central server (FIG 8, item 109 (national server) to item 102 (central server)).

Response to Arguments

Applicant's arguments and amendments filed 5/16/2005 have been fully considered but they are not persuasive.

Applicant argues that Datari does not teach passing the request for the data stream from the operator server to a central server. The examiner disagrees and directs the applicant's attention to FIG 8, item 109 (national server) to item 102 (central server)) where it is clear that a request for service is passed from the service provider to a regional distribution server.

Applicant argues that Datari does not teach supplying the client with a data stream from the source, the data stream optimized by a choice of path. The examiner disagrees

and directs the applicant's attention to col 8, lines 45-60 where a priority profiler is used to assure quality of service (optimize path) over a different nodes and communication paths.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(571) 273-8300 [Official communications; including

After Final communications labeled

"Box AF"]

(571) 273-6755 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

A handwritten signature in black ink, appearing to read 'M G Z' followed by a long horizontal stroke.

Mark Fadok

Primary Examiner